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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

10 || JOHN ADAMS, et al.,

CASE NO. CV F 02-5741 LJO DLB

11 || COURT'S RESPONSE TO PARTIES' OBJECTIONS TO PROPOSED EVIDENCE

12 || Plaintiffs,

13 || vs.

14 || PAUL SPEERS,

Defendant.

17 This Court has received and reviewed the parties' objections to the proposed evidence. (Docs.
18 204, 213). Unless there is good cause to obtain a pre-jury-selection ruling on proposed evidence, this
19 Court rules when a party offers the item to be admitted during the trial. Here, no good cause exists to
20 rule on the parties' objections prior to jury selection. Accordingly, this Court reserves ruling on the
21 parties' objections and will consider them at the time the evidence is offered to be admitted at trial.

22 Parties should consider several factors prior to offering items to be admitted at trial:

23 1. Whether the item is included in the Pretrial Order (Doc. 165);
24 2. Whether the item was the subject of a discovery request (including FED. R. CIV. P. 26
25 disclosures and expert disclosures requirements) and, if so, whether it was produced
26 timely;
27 3. If hearsay, whether an exception applies;
28 4. A document or photograph relied upon, or mentioned, by an expert witness will not be

1 admitted automatically over FED. R. EVID. 403 objections. This factor has specific
2 reference to autopsy photographs. The need to have the jury view autopsy photograph(s)
3 will depend on what issue of proof it pertains to, coupled with the need to admit the
4 photograph established by the expert him/herself;

5 5. If audio tape evidence is to be offered, counsel must first provide transcripts both to the
6 Court and opposing counsel; and
7 6. A diagram prepared and used by an expert witness for testimony purposes is not admitted
8 automatically over an objection of relevance, lack of foundation, and/or cumulative
9 testimony.

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13 IT IS SO ORDERED.

14 Dated: June 23, 2008

15 /s/ Lawrence J. O'Neill
16 UNITED STATES DISTRICT JUDGE

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